

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ENZO MORELLA, an individual,

Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF  
ILLINOIS, a foreign corporation,

Defendant.

No. 2:12-cv-00672 RSL

ORDER DENYING PLAINTIFF'S  
MOTION FOR REMAND

**I. Introduction**

This matter comes before the Court on plaintiff's "Motion to Remand." Dkt. #13. Plaintiff asserts that defendant has not shown that the amount in controversy exceeds \$75,000, and therefore, has not affirmatively established the Court's diversity jurisdiction. In an effort to meet its burden, the defendant has supplied the Court with a settlement letter from plaintiff that estimates damages at \$196,542.82 and includes a settlement demand of \$115,000. Dkt. #8. Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:

**II. Standard of Review**

As the party seeking removal, the defendant has the burden of establishing jurisdiction. Plaintiff elected not to allege a specific amount in his complaint. When an amount is absent from the complaint, the Ninth Circuit has adopted a preponderance of the evidence standard.

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1 Lewis v. Verizon Commc'ns, Inc., 627 F.3d 395, 397 (9<sup>th</sup> Cir. 2010).

### 2 **III. Discussion**

3 Although defendant chose not to include summary judgment type evidence regarding the  
 4 amount in controversy in its notice of removal, it responded to the Court's order of April 24,  
 5 2012, by submitting: 1) the plaintiff's Insurance Fair Conduct Act (IFCA) complaint and  
 6 settlement demand, 2) the letter from defendant requesting that plaintiff advise if he will  
 7 stipulate that the amount in controversy is \$75,000 or less, and 3) plaintiff's response that he is  
 8 unwilling to stipulate that his damages are \$75,000 or less. Dkt. #8. Plaintiff relies on Gaus v.  
 9 Miles, Inc., 980 F.2d 564 (9<sup>th</sup> Cir. 1992), and argues that the Court should remand because  
 10 defendant failed to meet its burden in its notice of removal. However, Gaus has been  
 11 distinguished by subsequent Ninth Circuit case law, which holds that the post-removal  
 12 submission of supporting evidence can be treated as amending the notice of removal. *See Cohn*  
 13 *v. Petsmart, Inc.*, 281 F.3d 837 (9<sup>th</sup> Cir. 2002) (holding that "the district court did not err in  
 14 construing Petsmart's opposition as an amendment to its notice of removal"). Although the  
 15 Court would have preferred if defendant had submitted its supporting evidence with its notice of  
 16 removal, the Court would not have issued its order of April 24, 2012, if it did not consider the  
 17 submissions relevant to a determination regarding jurisdiction.

18 Plaintiff also claims that defendant's response to the Court's order of April 24, 2012, fails  
 19 to prove the jurisdictional facts necessary for removal. The Court disagrees. In the  
 20 circumstances presented here, defendant's burden is to "provide evidence establishing that it is  
 21 'more likely than not' that the amount in controversy exceeds" the jurisdictional minimum.  
 22 Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9<sup>th</sup> Cir. 1996). Plaintiff's motion for  
 23 remand focuses on defendant's letter inquiring if plaintiff would be willing to stipulate that his  
 24 damages are \$75,000 or less. While the Court agrees that a refusal to stipulate, by itself, does  
 25 not conclusively establish the amount in controversy, the analysis is further informed by the  
 26 amount plaintiff chose for his settlement demand of \$115,000, which plaintiff derived from his

1 calculation of damages under IFCA. Dkt. #8.

2 The settlement demand is relevant evidence that may be considered by the Court. The  
3 Ninth Circuit has specifically “reject(ed) the argument that Fed.R.Evid. 408 prohibits the use of  
4 settlement offers in determining the amount in controversy.” Cohn v. Persmart, 281 F.3d at 843.  
5 In order for a settlement demand to be considered relevant evidence for jurisdictional purposes it  
6 simply needs to “appear to reflect a reasonable estimate of the plaintiff’s claim.” *Id.* at 840.

7 The Court finds the proposed settlement demand to be a reasonable estimate. Plaintiff  
8 argues that defendant’s assertion that the amount in controversy exceeds \$75,000 is not in good  
9 faith because defendant disagrees with how plaintiff calculated his damages and provides a  
10 counter estimate of \$10,542.82. This argument falls short. If plaintiff had chosen to allege an  
11 amount in the claim, the Court would have deferred to his determination as the master of the  
12 claim. The same logic applies to plaintiff’s settlement demand. As was the case in Cohn v.  
13 Petsmart, Inc., plaintiff’s settlement demand is sufficient to affirmatively establish jurisdiction.<sup>1</sup>

14 Finally, plaintiff’s argument that the Court should abstain from hearing this case under  
15 Burford v. Sun Oil Co., 319 U.S. 316 (1943), is unpersuasive. According to plaintiff, the  
16 unsettled question under IFCA is what is the meaning of “Actual Damages” that may be trebled  
17 under RCW 48.30.015(2). The Supreme Court of the United States has held that the Burford  
18 doctrine of abstention is usually reserved for courts of equity. Quackenbush v. Allstate Ins. Co.,  
19 517 U.S. 706, 116 (1996). In reply, plaintiff argues that abstention is still appropriate “where  
20 exercise of federal review would be disruptive of state efforts to establish a coherent policy.”  
21 Dkt. # 17 at 2. However, plaintiff has not shown that the Court’s review of this case would be  
22 disruptive, and there is no reason to assume such disruption. The Washington State Supreme  
23 Court has held that the meaning of “Actual Damages” can be imported from Washington State

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25 <sup>1</sup>Even the average of plaintiff’s estimate of \$196,542.82 and the defendant’s estimate of  
26 \$10,542.82 is well over the amount required to give the Court jurisdiction.

1 case law and that the meaning is consistent with the definition provided by Black's Law  
2 Dictionary. Martini v. Boeing Co., 137 Wn.2d 357(1999). Furthermore, the Court can certify to  
3 the Washington State Supreme Court any question of Washington State law that has not been  
4 clearly determined pursuant to RCW 2.60.020.

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6 For all of the foregoing reasons, the Court finds that the defendant has carried its burden of  
7 showing by a preponderance of the evidence that the amount in controversy exceeds \$75,000  
8 pursuant to 28 U.S.C.A. § 1332. Plaintiffs' motion for remand (Dkt. #13) is DENIED.

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10 Dated this 16th day of July, 2012.

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12 Robert S. Lasnik

13 United States District Judge  
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